

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.380 of 2001

Judgment Reserved on : 8.12.2017

Judgment Delivered on : 1.3.2018

Rajkumari, W/o Jai Krishn Kolta, aged about 41 years, resident of Goriya, Thana Basna, District Mahasamund, Chhattisgarh

---- Appellant

versus

The State of Chhattisgarh, through the District Magistrate Mahasamund, Chhattisgarh

--- Respondent

For Appellant : Smt. Indira Tripathi, Advocate
For Respondent/State : Shri Neeraj Kumar Mehta, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 18.4.2001 passed by the 2nd Additional Sessions Judge, Mahasamund in Sessions Trial No.281 of 2000 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. Facts of the case, in brief, are that in the year 1998, marriage of Divya (deceased) was performed with Rajesh (PW2), son of the Appellant. They all were residing together. The relationship between Divya and Rajesh was cordial. It is alleged that the Appellant, mother-in-law of Divya was harassing Divya on account of bringing less dowry. It is further alleged that on 19.3.2000,

Rajesh was not present at home. At that time, the Appellant caught the mouth of Divya and deliberately made her drink acid. Divya was immediately taken to the hospital at Goriya. From there, she was taken to Jagdishpur Hospital and from there she was taken to Chhuipali Hospital and thereafter she was taken to Burla Hospital where she was admitted on 20.3.2000. She remained admitted in the hospital for 10-11 days. Improvement in her health was not seen. It got worse. Her dying declaration (Ex.P5) was recorded by Naib-Tahsildar S.D. Thakur (PW16). The hospital administration asked to take Divya back to home. She was taken back to home in the night of 31.3.2000. She died at home in the night of 31.3.2000 itself. Morgue Intimation (Ex.P7) was lodged by Chudamani (PW9). Inquest (Ex.P1) was prepared. Spot-map (Ex.P8) was prepared. First Information Report (Ex.P13) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. Post mortem examination was conducted by Dr. A.K.S. Ratre (PW13). He gave post mortem examination report (Ex.P12) in which he stated that the lips and the corner side of the mouth were burnt and tongue was also burnt. Scarring was present in food-pipe. He opined that the death took place due to shrinking of food-pipe and the mode of death was suicidal. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 304B of the Indian Penal Code. Charge was framed against her under Section 304B of the Indian Penal Code.

3. To rope in the Appellant, the prosecution examined as many as 16 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which she denied

the circumstances appearing against her, pleaded innocence and false implication. No witness has been examined in her defence.

4. The Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the prosecution witnesses No.3 to 7 have improved their statements during their examination in the Court. The Trial Court has disbelieved the dying declaration, but taken the same adversely against the Appellant contrary to the provisions of law. From the material on record, there was no demand of dowry. But, the relatives of the deceased materially improved their statements and the Trial Court wrongly accepted their testimony and convicted the Appellant. There is nothing on record to show that the deceased was subjected to cruelty by the Appellant. Therefore, the Appellant deserves to be acquitted.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Rajesh (PW2), husband of deceased Divya has deposed that his marriage with Divya was solemnised in the year 1998. Raviram (PW3), father of the deceased, Ramlal (PW4), uncle of the

deceased, Subaliya (PW7), sister-in-law (*Bhabhi*) of the deceased have also stated that the marriage was solemnised 2-3 years before the death of the deceased. Rajesh has stated that on the date of incident, which was the day of Holi festival, he was not present at home. At that time, Kamlabai and his mother (the Appellant) informed that deceased Divya was vomiting. On being asked, she replied that she had consumed acid. On being asked about the reason of consumption of acid, she did not state anything. He has further stated that Divya was taken to the hospital. She remained admitted in the hospital for about 10-11 days. The doctor advised them to take Divya back to home. After taking her back to home, she died.

9. Divya (deceased) was firstly examined by Dr. Nand Kishore Agrawal (PW8). He has stated that he examined Divya on 19.3.2000. He gave his report (Ex.P6) in which he found that saliva was oozing out of her mouth. Tongue and mucous membrane of oral cavity was red and congested. He opined that Divya had consumed acid. Divya was further examined by Dr. Meri Kutti (PW12). She has stated that on primary examination, she also found that Divya had consumed acid which is filled in battery. She informed the police vide Ex.P11 and she discharged Divya same day in the evening giving advice to take her to a better hospital. After death of Divya, post mortem examination was conducted by Dr. A.K.S. Ratre (PW13). He gave post mortem examination report (Ex.P12) in which he stated that the lips and the corner side of the mouth were burnt and tongue was also burnt. Scarring was present in food-pipe. He opined that the death took place due to shrinking of food-pipe and the mode of death was

suicidal.

10. From the statements of prosecution witnesses, the medical examination report (Ex.P6) and the post mortem examination report (Ex.P12), it appears that the cause of death was consumption of acid. From the evidence on record, it is also clear that the death took place within 7 years of the marriage and in unnatural circumstances.
11. As per the prosecution story, the deceased was subjected to cruelty by the Appellant due to bringing less dowry. In this regard, Raviram (PW3), father of the deceased has stated that the deceased was happy with her husband, but her relationship with her mother-in-law (the Appellant) was not good. He has further stated that once the deceased had told him that her mother-in-law used to harass her in respect of gold and dowry. In paragraph 9 of his cross-examination, he has stated that the deceased had told him about this 8 days prior to the incident. But, this fact is not mentioned in his case diary statement. He has further admitted that till the deceased was alive, he never made any complaint to anyone that mother-in-law of the deceased used to harass her for dowry.
12. Ramlal (PW4), uncle of the deceased has stated that after the marriage of the deceased, he used to meet her, but she never told him anything about the matters of her in-laws.
13. Pramod (PW5), brother of the deceased has also deposed that the

deceased had told him prior to 8-10 days of the incident that her mother-in-law used to harass her for bringing watch, cycle, TV, fan as dowry, but this fact is not mentioned in his case diary statement (Ex.D-2).

14. Sakhibai (PW6), mother of the deceased has stated that once when she was not present at home, at that time, the deceased had told her *Bhabhi* (sister-in-law) Subaliya (PW7) that the mother-in-law (the Appellant) used to demand colour TV and gold. In paragraph 4 of her cross-examination, she has stated that this matter was of 8-10-15 days prior to the date of death. But, Subaliya (PW7), sister-in-law of the deceased has stated that after marriage of the deceased she never met her. She has further stated that a talk had taken place between them after the marriage, but the deceased never told her about the quarrel alleged to have taken place between the deceased and her mother-in-law. Apart from the above, there is no evidence on record regarding harassment or dowry made by the Appellant.
15. From the above, it is clear that though Raviram (PW3), father of the deceased, Pramod (PW5), brother of the deceased have stated that 8-10 days prior to the date of death of the deceased, she had told them that her mother-in-law used to harass her for demand of dowry, but this fact is not mentioned in their case diary statements. Similarly, Sakhibai (PW6), mother of the deceased has also stated that the deceased had told her sister-in-law Subaliya (PW7) about the demand of dowry by the mother-in-law, but Subaliya (PW7) has not supported the above statement.

- 16.** Thus, there is no legally admissible evidence on record on the basis of which it can be presumed that the deceased was ever harassed or tortured by her mother-in-law (the Appellant).
- 17.** Contrary to their case diary statements, Raviram (PW3), Ramlal (PW4), Pramod (PW5), Sakhibai (PW6) and Subaliya (PW7), all relatives of the deceased, have stated in their Court statements that when the deceased was hospitalised, on being asked, she had told that her mother-in-law (the Appellant) had made her drink acid which is used for filling in the battery. Since this fact is not mentioned in their case diary statements, therefore, it is also clear that all the above witnesses have exaggerated their statements in the Court during trial.
- 18.** As per the prosecution story, on 20.3.2000, dying declaration (Ex.P5) of the deceased was recorded by Naib-Tahsildar S.D. Thakur (PW16). S.D. Thakur has stated that while recording the dying declaration (Ex.P5), the deceased, on being asked, told that due to not being done some work in proper manner, a quarrel had taken place between her and her mother-in-law (the Appellant). The quarrel had taken place between them for the first time and she, at her own will, had consumed the acid which is used in battery. He has further stated that during the whole session of recording of her dying declaration, she was fully conscious and was able to speak clearly. He has admitted that the dying declaration was recorded in two different inks because ink of the pen which was first being used for recording of the dying declaration had got exhausted. This witness has further stated that at the time of recording of the dying declaration, the doctor was not

present in the hospital, but as per the statement of Dr. Meri Kutti (PW12), she had remained present at the time of recording of the dying declaration. For the above reason, the Trial Court has disbelieved the dying declaration (Ex.P5) recorded by the Naib-Tahsildar.

19. On minute examination of the material available on record, I find that though Raviram (PW3) and Pramod (PW5) have stated that once the deceased had told them soon before her death about the demand of dowry and harassment being given to her by the Appellant yet I find no conclusive evidence on record to establish that the deceased was harassed by the Appellant soon before her death.
20. Necessary ingredients for invoking the provisions of Sections 302, 304B and 306 of the Indian Penal Code read with Section 113B of the Indian Evidence Act have been discussed by the Supreme Court in the case of **(2008) 4 Supreme 228 (Narayanamurthy v. State of Karnataka)**. In paragraphs 17 and 18 of the said judgment, it has been observed thus:

“17. The basic ingredients to attract the provisions of Section 304B, IPC, are as follows:-

- “(1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;
- (2) such death occurs within 7 years from the date of her marriage;
- (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(4) such cruelty or harassment should be for or in connection with the demand of dowry; and

(5) it is established that such cruelty and harassment was made soon before her death.”

18. In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of this Court in *Satvir Singh v. State of Punjab*, [2001 (8) SCC 633] wherein it was held: (SCC p. 643, paras 21-22)

“21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But, it should have happened 'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that

expression. The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'."

21. In (2013) 14 SCC 678 (Indrajit Sureshprasad Bind v. State of Gujarat), the Supreme Court has observed thus:

“9. To establish the offence of dowry death under Section 304-B IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under Section 498-A IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in clauses (a) and (b) of the Explanation to Section 498-A IPC. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed from Ext. 31 written by PW 3 to the deceased on 24-4-2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to commit suicide, it is difficult for the Court to hold that the appellants had in any way abetted the suicide by the deceased on 18-5-2004.”

- 22.** In view of the foregoing discussion, I find that the prosecution has not been able to make out a case of Section 304B of the Indian Penal Code against the Appellant beyond reasonable doubt.
- 23.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against her.
- 24.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE